

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
HUMBERTO LOPEZ-MENDOZA, <i>Defendant-Appellant.</i>

No. 02-4303

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Henry C. Morgan, Jr., District Judge.
(CR-01-200-01)

Submitted: August 22, 2002

Decided: September 3, 2002

Before WIDENER and KING, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

David W. Bouchard, Chesapeake, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Darryl J. Mitchell, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Humberto Lopez-Mendoza appeals his conviction and sentence for reentry by a deported alien in violation of 8 U.S.C. §§ 1326(a), (b)(2) (2000). Finding no reversible error, we affirm.

Lopez-Mendoza raises only one claim on appeal, contending that the district court abused its discretion in denying his motion for a downward departure based on cultural assimilation. Because a decision to depart from the sentencing guidelines is a highly factual determination within the exclusive province of the sentencing court, this court will only review such a decision if it reflects a purely legal determination, such as the district court's misapprehension of its authority to depart. *United States v. Wilkinson*, 137 F.3d 214, 230 (4th Cir. 1998); *United States v. Bayerle*, 898 F.2d 28, 30-31 (4th Cir. 1990). We have reviewed the sentencing transcript as set forth in the joint appendix and find that the district court considered the grounds raised in Lopez-Mendoza's motion and concluded that a downward departure was not warranted under the facts of the case. Therefore, we find that this claim is not subject to appellate review.

Accordingly, we affirm Lopez-Mendoza's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED